



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

Case #: MOP - 175085

PRELIMINARY RECITALS

Pursuant to a petition filed on June 21, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Dept. of Human Services regarding a determination that she was overpaid Medical Assistance (MA), a hearing was held on August 9, 2016, by telephone. Hearings set for July 21, 2016, and July 17, 2016, were rescheduled at the petitioner's request. At the request of the county agency, the record was held open for 10 days for the submission of additional information.

The issue for determination is whether the petitioner was overpaid \$5,514.74 in Medical Assistance due to member error and fraud, during the period of July 1, 2011 – December 31, 2015.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED], Income Maintenance Worker
Dane County Dept. of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County. During the period of July 1, 2011, through December 31, 2015, the petitioner was receiving Medical Assistance under the Medicaid Purchase Plan, or "MAPP". MA paid for \$4,774.07 for services rendered to the

- petitioner, only, during this time period, and \$740.67 in monthly capitation rates during this same period, generating a total overpayment for this time period of \$5,514.74. Capitation rates are amounts the Department pays to maintain the petitioner's insurance coverage even when claims are not made. See, Exhibit #11.
2. The county agency was separately reviewing allegations of Food Stamps overpayments against the petitioner, and her husband, in at least early May, 2016, on household composition and income grounds. The agency had concluded that the petitioner had been living with her husband, [REDACTED] and their grand-daughter, [REDACTED] since mid-2011, and not in three separate FS groups. The agency also reviewed other public assistance eligibility at that time.
 3. On May 12, 2016, the agency issued a letter to the petitioner informing her that it had determined that she had been overpaid for all MA benefits paid on her behalf in the period described in Finding of Fact #1, above, because she had not been eligible for MAPP benefits at all. See, Exhibit #12.
 4. On May 12, 2016, the agency issued a Wisconsin Medicaid And BadgerCare Plus Overpayment Notice to the petitioner informing her that the agency had concluded that she had been overpaid \$5,514.74 in Medical Assistance from July 1, 2011, through December 31, 2015, due to "member error" and due to "fraud". See, Exhibit #12.
 5. MAPP is a program that provides coverage to disabled persons engaged in work, with higher income and asset limits than other recipients of Medical Assistance. To be eligible for MAPP, a disabled person must be working.
 6. On July 13, 2011, the petitioner filed with the Adams County Department of Human Services a hand-written statement that indicates that [REDACTED] cleans [REDACTED] house 3 times a week and in return the petitioner made her meals. She provided an essentially similar statement on June 21, 2012. See, Exhibit #9. [REDACTED] was 13 years old in 2011. See, Exhibit B, at p. 4.
 7. On May 30, 2013, the petitioner filed with the Adams County Department of Human Services a hand-written statement that indicates that [REDACTED] cleans [REDACTED] house everyday and in return the petitioner made her dinner. See, Exhibit #9. [REDACTED] was 15 years old in 2013.
 8. On June 5, 2014, the petitioner filed with the Adams County Department of Human Services a MAPP Employment Verification form that indicates that she is working 60-80 hours per month cooking for her grand-daughter [REDACTED] in return for cleaning and washing clothes performed by [REDACTED]. She estimated the in-kind value of this cooking work she performed to be about \$75 per month, and she had been doing it since January 1, 2012. See, Exhibit #9.
 9. On June 30, 2015, the petitioner again provided the agency with a hand-written statement to the effect that [REDACTED] cleans [REDACTED] house and [REDACTED] cooks her meals in return. See, Exhibit #9. [REDACTED] was 17 years old in 2015.
 10. [REDACTED] was residing with the petitioner and [REDACTED] at [REDACTED] Wisconsin, during at least the periods of June 21, 2011 through July 30, 2014; and again from October 2, 2014 – November 30, 2015. Her period of absence was when she was in foster care because she had been removed by social services due to a teen pregnancy, a related earlier runaway incident out of state, and an ongoing relationship with an adult teenage boy from Connecticut who is the father of her child. And in any event, in the period of foster placement, [REDACTED] could not have been cooking meals for [REDACTED] in return for cleaning as [REDACTED] was absent from the home.
 11. On June 21, 2016, the petitioner filed an appeal with the Division contesting the Department's determination of May 12, 2016, that she had been overpaid MAPP, i.e., MA benefits.

12. At no time during the hearing did the petitioner contest the computation of the MA overpayment mathematically, or point to any mathematical error. Rather, she asserted, by her witnesses and argument on her behalf, that [REDACTED] had not been living with her and that she was otherwise eligible for MAPP for the work arrangement.

DISCUSSION

In the course of the Food Share overpayment investigation, the county agency ascertained that [REDACTED], a minor granddaughter, had actually been living in the same household as the petitioner, her paternal grandmother.

DHS is legally required to seek recovery of incorrect MA payments when a recipient engages in a misstatement or omission of fact to the MA program, which in turn gives rise to an MA overpayment:

49.497 Recovery of incorrect medical assistance pay-

ments. (1) (a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s.49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s.49.665.
2. The failure of a Medical Assistance or BadgerCare recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits for the recipient's cost-sharing requirements.

(b) The department's right of recovery is against any Medical Assistance or Badger Care recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted ...

Wis. Stat. §49.497(1). See also, *Medicaid Eligibility Handbook*, 22.2.1, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

MAPP rules do not appear to contemplate allowing the otherwise disabled recipient to establish that she meets the MAPP work requirement solely by demonstrating that the recipient is performing household chores for those residing together, like the stated cooking for minor grand-daughter [REDACTED] in return for household cleaning by [REDACTED].

The *Medicaid Eligibility Handbook* states only the following guidance:

26.3.3 Work Requirement (MAPP)

To meet the work requirement, a member must engage in a work activity at least once per month or be enrolled in an HEC program (see Section 26.3.4 Work Requirement Exemption). Consider a member to be working whenever he or she receives something of value as compensation for his or her work activity. This includes wages or in-kind payments. The exceptions are loans, gifts, awards, prizes, and reimbursement for expenses.

Medicaid Handbook § 26.3.3.

This provision has, in my 25 years of experience in reviewing MAPP cases always been liberally construed to encompass virtually any bona fide work done for compensation for another party, including as little as \$1 in pay. But I have never seen it defined and accepted by an agency administering MAPP that a recipient meets the work requirement merely by cooking for another resident (husband, child, unrelated adult, or any other person) of the same home for what are commonly, and in all normal common-sense, basic household chores everybody does like making your meals, doing laundry, and picking up the house. In addition, this petitioner went one step further and led the agency to believe that [REDACTED] was not living in the same residence, but next door. I have already concluded for the reasons stated in the DISCUSSION in companion cases FOP-175084 and FOP-175086, both of which I incorporate by reference here in those parts of the discussions about finding that [REDACTED] was living with this petitioner, that [REDACTED] was so living with the petitioner. To conclude otherwise would be to open the door to the argument that any other resident in the home can exchange chores with you and meet the work requirement. That is simply madness.

This is a close case, but I must conclude that the agency has established by the preponderance of the credible evidence that the petitioner's asserted arrangement with [REDACTED] to cook meals in return for cleaning by [REDACTED] (i.e., from another household member) does not meet the MAPP work activity requirement and thus she was overpaid for the entire period of time asserted by the agency in the amount of \$5,514.74, between July 1, 2011 – December 31, 2015.

CONCLUSIONS OF LAW

The petitioner was overpaid MAPP benefits of \$5,514.74 during the period of July 1, 2011, through December 31, 2015 because she did not meet the work activity requirement and she did not accurately report that [REDACTED] [REDACTED] was living in the same household; and they were both doing normal household chores for each other.

THEREFORE, it is

ORDERED

That the petition for review herein is, and the same hereby is, dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

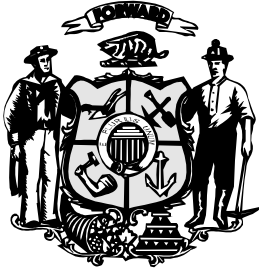
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 29th day of August, 2016

\s _____
Kenneth D. Duren
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 29, 2016.

Dane Cty. Dept. of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability